AUDREY JEAN BOSTON

IBLA 82-875 Decided September 16, 1982

Appeal from the decision of the Wyoming State Office of the Bureau of Land Management rejecting oil and gas lease application W-77591.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Filing -- Regulations: Applicability

   Where an applicant is to be deprived of a statutory right because of a failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no basis for noncompliance.

2. Evidence: Sufficiency -- Oil and Gas Leases: Applications: Sole Party in Interest

   Where substantial evidence of record supports BLM's rejection of a lease application on the basis of its finding that another party holds an undisclosed interest therein, the mere denial of that fact by the applicant is insufficient to overturn the decision on appeal.

APPEARANCES: Audrey Jean Boston, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The simultaneously-filed oil and gas lease application of Audrey Jean Boston was drawn with first priority for parcel no. WY-4834 in the September 1981 drawing conducted by the Wyoming State Office of the Bureau of Land Management (BLM). Thereafter, BLM called upon Boston to execute and return the lease forms, pay the first year's rental in the amount of $4,394, and to submit a copy of the filing service agreement "if you were a client of a filing service."

In response, BLM received a letter from one Coleman E. Morgan on letterhead stationery showing that Morgan is an agent for a life insurance company. The letter served as the transmittal document for a certified copy of an agreement between Morgan and a filing service (U.S. Oil and Gas Corp.), three copies of the lease form executed by Audrey Jean Boston, and a check for the rental. The letter, signed by Morgan, states, in part: "* * * I am enclosing [a] check for the first year's rental * * *. You will note that the filing service agreement is in the name of Coleman E. Morgan, which is correct since the agreement was in his name and the money was paid by him." The rental check is a personalized instrument with the name "Coleman E. Morgan" printed on it, but is signed:

Coleman E. Morgan
By: Audrey Jean Boston.

The check is completed in longhand script which appears to be the same handwriting as that of Audrey Jean Boston. Thus it would seem that Boston actually wrote the check on Morgan's account, which was then submitted to BLM by Morgan, together with the other documents.

By its decision of May 12, 1982, BLM rejected Boston's lease offer for two reasons, as follows:

> The rental, executed lease forms and a copy of an agreement were received in this office on May 10, 1982, and came in an envelope with a return address of Coleman E. Morgan, P. O. Box 23, Crossville, TN 38555. The service agreement submitted was one which was entered into by Coleman E. Morgan with U.S. Oil and Gas Corp. The transmittal letter was signed by Coleman E. Morgan and advised the filing service agreement is in his name "which is correct since the agreement was in his name and the money paid by him". With this submission, it appears the application made by you for this parcel was for the benefit of Coleman E. Morgan. Regulation 43 CFR 3102.2-7 states, "Sole party in interest. (a) The applicant shall set forth on the lease offer, or lease application if leasing is in accordance with Subpart 3112 of this title, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer or lease, if issued." Your application card did not indicate any parties in interest.
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> The decision requesting the rental advised, "The first year's rental shall be paid only by you, or your attorney-in-fact, . . .". (emphasis added) Regulation 43 CFR 3112.4-1(a) states in part, ". . . The first year's rental shall be paid only by the applicant, or his/her attorney-in-fact as described in paragraph (b) of this section. . . .". The check submitted for the rental was made by Coleman E. Morgan which is in violation of regulation 43 CFR 3112.4-1(a).

[1] With regard to the second of the foregoing reasons for rejection, i.e., the requirement that "the first year's rental shall be paid only by the applicant," etc., this Board has recently held that 43 CFR 3112.4-1(a) is too ambiguous to ascertain exactly what is proscribed, and therefore it cannot be

the basis for depriving an applicant of a statutory right. Brian D. Haas, 66 IBLA 353 (1982). There we noted that when the regulation was promulgated, the preamble to the final rulemaking published in the Federal Register declared that its object was to control and limit those who could submit the first year's rental, whereas the language of the regulation concerns those who can pay the rental. We observed that numerous and various interpretions could be ascribed to this language, such as a prohibition against an applicant using borrowed money to pay the rental, or against another person delivering the applicant's own money to BLM.

The instant case exemplifies the problem. The check was drawn and signed by the applicant, Boston, but was signed by her on behalf of Morgan, and drawn against funds in Morgan's account. This could be interpreted either as "payment" by Boston or as "payment" by Morgan. Regardless of who "paid" the rental, it clearly was "submitted" by Coleman, although that is not prohibited by the language of the regulation itself, but only by the Department's explanation of what the regulation intended.

Therefore, consistent with our holding in Brian D. Haas, supra, we conclude that the rejection of the subject oil and gas lease offer cannot be sustained on this basis. Where an applicant is to be deprived of a statutory right because of a failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no reasonable basis for noncompliance. Ross L. Kinnaman, 48 IBLA 239, 242 (1980); Wallace S. Bingham, 21 IBLA 266, 282, 82 I.D. 377, 384 (1975); A. M. Shaffer, 73 I.D. 293, 300 (1966).

[2] We turn now to BLM's other reason for rejecting Boston's lease offer, i.e., that she certified on her application that she was the sole party in interest in the application, or the offer or lease which might result, but that the subsequent submissions indicated that the application was made for the undisclosed benefit of Coleman E. Morgan, a violation of 43 CFR 3102.2-7.

We find that BLM's holding on this issue is supported by substantial evidence which is not refuted by Boston.

The address given by Boston on her lease application is the address of Morgan's business office, as shown on his letterhead. The rental was paid by Morgan's personal check, drawn on his account. Morgan wrote and signed the letter of transmittal, by which he submitted the various documents to BLM. Morgan is engaged in seeking to acquire oil and gas leases on federal lands, as evidenced by his contractual agreement with the filing service.

These circumstances are closely aligned with those recently encountered in the appeal of Lynda Bagley Doye, 65 IBLA 340 (1982). Although that case was decided on other grounds, we took notice of the fact that although the individual applicant had certified that she was the sole party in interest, her address was that of a corporation, the corporation had tendered the rental on a corporate check drawn on its account, all correspondence concerning the lease application was on corporate stationery, and employees of the corporation were involved in processing the application.

In the instant case, Boston has made no effort on appeal to explain her relationship to Morgan, or his substantial involvement in a matter in which he allegedly has no interest. Boston's statement of reasons for appeal asserts only:

> * * * The full responsibility for the lease will be mine and the lease is to be in my name only. The copy of the agreement in the name of Coleman E. Morgan, and signed by him, was sent to you in error. Mr. Morgan is in no way responsible or has any interest in this lease.

The decision below rejected the lease offer on the basis of BLM's finding that Morgan has an undisclosed interest in violation of 43 CFR 3102.2-7, and it recited at least some of the evidence on which its finding was based, thereby placing the question squarely at issue on appeal. Boston's simple denial, without more, is inadequate to overcome the substantial evidence of record to the contrary.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Edward W. Stuebing
Administrative Judge

We concur:

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Bruce R. Harris
Administrative Judge

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Will A. Irwin
Administrative Judge